

JAS. O. BREENE, JR.

IBLA 79-8 Decided January 16, 1979

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting an offer to lease for oil and gas. W 63864.

Reversed.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Noncompetitive Leases

Where an offeror for a noncompetitive, over-the-counter oil and gas lease certifies that he is a United States citizen, his failure to disclose whether he is a native-born or naturalized citizen will not support rejection of his offer where an offeror for a noncompetitive, simultaneous oil and gas lease is not required to disclose similar information.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jas. O. Breene, Jr., appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 12, 1978, rejecting appellant's offer to lease certain lands in the public domain for oil and gas. The lands in question are located in Carbon County, Wyoming, and are more particularly described as follows:

T. 25 N., R. 84 W., sixth principal meridian sec. 15: N 1/2 sec. 18: Lots 1, 2, E 1/2 NW 1/4, NE 1/4

T. 25 N., R. 85 W., sixth principal meridian sec. 13: N 1/2 N 1/2, SE 1/4 NE 1/4 sec. 14: NE 1/4 NE 1/4

On May 15, 1978, appellant's offer to lease the aforementioned lands was received in the BLM Land Office, Cheyenne, Wyoming. The offer is set forth in a printed form (Form 3120-3) furnished by BLM for noncompetitive, over-the-counter leases of oil and gas.

Item 5 of this form contains the following text:

Undersigned certifies as follows:

(a) Offeror is a citizen of the United States. Native born * * *. Naturalized * * *. Corporation or other legal entity (specify what kind): * * *.

In filling out this item, the appellant failed to designate in any manner whether he was a naturalized or native born citizen of the United States. BLM therefore rejected appellant's offer in a brief letter informing him that item 5 was incomplete.

In his appeal of this rejection, appellant calls our attention to section 1 of the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), which authorizes the disposition of oil and gas on public lands to citizens of the United States. The relevant portion of this section reads as follows: "Deposits of * * * oil * * * or gas, and lands containing such deposits owned by the United States * * * shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States * * *." The statute draws no distinction between naturalized citizens and those native born.

Appellant calls our attention also to 43 CFR 3111.1-1 which requires that an offer to obtain a noncompetitive lease be made on a form approved by the Director.

The substance of Mr. Breene's appeal is that a regulation, such as 43 CFR 3111.1-1, which requires the disclosure of a fact which is immaterial to the grant or denial of a lease has no legitimate legislative purpose. Appellant argues that the disclosure of the basis of citizenship is immaterial inasmuch as 30 U.S.C. § 181, supra, makes no distinctions in this regard. BLM cannot, therefore, base its rejection of appellant's offer on this regulation, because the regulation has no legitimate legislative purpose.

Similar arguments were raised in Spelman Prentice, Wyoming 0314403 (May 6, 1966). Therein, the rationale for requiring disclosure of the basis of one's citizenship was ably set forth:

There is no distinction in the Mineral Leasing Act, supra, in the entitlement of native born or naturalized citizens to take and hold oil and gas leases. Nevertheless, the indication by the offeror as to whether he is a native born or naturalized citizen assists in any verification or proof

of citizenship which may be deemed necessary to insure compliance with the Act. The request for such information is, therefore, not improper.

However, that BLM decision went on to hold that the certification that the offeror was a citizen was sufficient and acceptable for lease issuance. We are unaware of any other decision or interpretation reaching the opposite conclusion except the decision being appealed.

We note that the instruction for item 5(a), Form 3120-3, states: "Item 5(a). _____ Offeror will indicate whether a citizen by birth or naturalization. If production is obtained under this lease or allocated to it, the citizenship status of the lessee will be verified." Hence the purpose of the disclosure at issue appears to be to assist BLM in verifying the citizenship of the lessee.

[1] However, BLM erred in rejecting the offer submitted by the appellant. Apparently, at least since 1966, where there has been a certification of citizenship, the failure to specify the class of citizenship has not been considered a defect resulting in loss of priority. Furthermore, BLM should not require disclosure of the basis for citizenship of its offerors for noncompetitive, over-the-counter oil and gas leases and not require disclosure of this same information of its offerors for noncompetitive, simultaneous oil and gas leases. We hold that appellant's failure to disclose the basis for his citizenship cannot support BLM's rejection of his otherwise complete offer.

We note that no regulation specifically requires an over-the-counter offeror to disclose the basis of his citizenship. The requirement of disclosure of citizenship of lessees in general is set forth in 43 CFR 3102.2-1: "A statement over the offeror's signature setting forth his citizenship shall accompany each offer when first filed." The appellant has clearly complied with this requirement. His signature on the offer submitted to BLM is a certification of his United States citizenship.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

